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FY 2003 Statutory Checklists

*This document has been updated in its entirety for FY 2003.

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I. INTRODUCTION

The following checklists are intended to be convenient references when planning and implementing assistance programs. The checklists do not have every country prohibition or restriction. Consult the attorneys assigned to your Bureau or Mission to determine if there are additional country-specific or activity-specific prohibitions and "notwithstanding" authorities.

Please see ADS 201.3.3.4 for the rules on when a checklist should be prepared. In doing a checklist you make a reasonable inquiry, determine the applicability of each statutory reference, and set forth any additional comments or issues (for example, "We are not aware of any information that requires action under this section" or "We are not aware of any violations under this provision").

Country Checklist

The Country Checklist includes the important provisions of general application from the Foreign Assistance Act of 1961, as amended (FAA) and the FY 2003 Foreign Operations Appropriations Act, Division E, Pub. L. 108-7, February 20, 2003 (FY 2003 Act). The Country Checklist does not list every statutory or regulatory provision applicable to a particular country.

Assistance Checklist

The Assistance Checklist has the activity-specific provisions of the FAA and the FY 2003 Act.

Notwithstanding Authorities

There are various "notwithstanding" authorities that USAID might use to provide assistance when it would otherwise be prohibited. Some examples follow:

1. Disaster Assistance (FAA Sec. 491).
2. Health and Disease Prevention (FAA 104(c)(6)(C)(ii) and Child Survival and HIV/AIDS (FY 2003 Act Sec. 522).
3. Assistance for Eastern Europe and the Baltic States (Title II of the FY 2003 Act).
4. Assistance to the Independent States (FAA Sec. 498B(j)).
5. Afghanistan (only for loan defaults under section 512 of the FY 2003 and section 620(q) of the FAA); Lebanon; Montenegro; victims of war; displaced children; displaced Burmese; victims of trafficking in persons; and, except for sections 116, 502(b) and 620A of the FAA, tropical forestry, biodiversity conservation and energy programs aimed at reducing greenhouse gas emissions (FY 2003 Act Sec. 534).
6. Non-governmental organizations and PL 480 (FY 2003 Act Sec. 537).
7. Title II Emergency Programs (PL, 480 Sec. 202(a)).
8. ESF funds for democracy activities in the People's Republic of China, Hong Kong, Tibet, and Iran (FY 2003 Act Sec. 526).

II. COUNTRY CHECKLIST

Part A of the Country Checklist has the general provisions to be completed for a country.

Part B has the “taking into consideration” provisions. They are considered by the Administrator in the annual “Taking into Consideration” Memorandum as part of the Operational Year Budget (OYB) process for all countries, not just those in the OYB. Because they have already been taken into account as part of the budget process, you do not have to include them in doing the checklist.

Part A. -- General Provisions

1. *Narcotics Certification* (Section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107-228) (FRAA), September 30, 2002). As a result of the Presidential Determination of January 30, 2003, this provision only applies to Burma. All the other "major illicit drug-producing or drug-transit" countries (Afghanistan, The Bahamas, Bolivia, Brazil, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam) were determined either

- Not to have failed demonstrably, during the previous 12 months, to adhere to their obligations under international counternarcotics agreements and to take the counter-narcotics measures set forth in section 489(a)(1) of the FAA; or
- To be vital to the national interests of the United States.

Is this restriction applicable? Please comment.

2. *Indebtedness to U.S. Citizens* (FAA Sec. 620(c)). Absent a Presidential determination based on national security needs, assistance to a government is prohibited if the government is indebted to any U.S. citizen or person, and (a) such citizen or person has exhausted available legal remedies, (b) the debt is not denied or contested, or (c) the indebtedness arises under an unconditional guaranty of payment given by such government (or controlled entity).

Is this restriction applicable? Please comment.

3. **Seizure of U.S. Property** (Section 527 of the Foreign Relations Authorization Act, 1994-95, which superseded FAA Sec. 620(e)). Absent a waiver by the Department of State, assistance to a government is prohibited if that government has expropriated or seized ownership or control of property at least 50 percent beneficially owned by U.S. citizens without

- (a) Returning the property to the owner,
- (b) Compensating the owner for the property,
- (c) Offering a domestic procedure providing prompt, adequate, and effective compensation for the property, or
- (d) Submitting the dispute to international arbitration.

As of 1/22/02, the only country identified is Nicaragua, which has received a waiver.
[Contact: State/EB/IFD/OIA, Neil Efird, 202-736-4246]

Is this restriction applicable? Please comment.

4. **Specific Countries** (FAA Secs. 620(a) and 620(f); FY 2003 Act Sec. 507). Assistance is prohibited to Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. Assistance to Iraq permitted if national security interest determination is made. [Notes: Prohibitions on assistance to China, Tibet, and Vietnam have been waived.]

Is this restriction applicable? Please comment.

5. **Loan Default** (FAA Sec. 620(q); FY 2003 Act Sec. 512 [Brooke Amendment]; see ADS 623). Absent a Presidential waiver, assistance is prohibited to the country under section 620(q) and only to the government of the country under section 512 where

- (a) The government of the recipient country has been in default for more than six months on interest or principal of any loan by the U.S. to such country under the FAA; or
- (b) The country has been in default for more than one calendar year on interest or principal on any U.S. foreign assistance loan.

For list of countries see the 620q report at <http://inside.usaid.gov/M/FM/> (accessible to USAID intranet users only)
[Contact: FM/LM.]

Is this restriction applicable? Please comment.

6. ***Diplomatic Relations With U.S.*** (FAA Sec. 620(t)). Assistance is prohibited if diplomatic relations between the U.S. and the recipient country are currently severed.

Is this restriction applicable? Please comment.

7. ***International Terrorism*** (FY 2003 Act Sec. 527; FAA Secs. 620A, 620G). Absent a Presidential waiver on national security grounds or for humanitarian reasons, assistance is prohibited to a recipient country that the Secretary of State has determined

- (a) Grants sanctuary from prosecution to any terrorist, or
- (b) Otherwise supports or assists terrorist governments (as determined by FAA Sec. 620A) or international terrorism.

The following have been identified as countries whose governments have repeatedly provided support for acts of international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

[Contact: L/LEI, Elizabeth Wilcox, 202-647-7324.]

Is this restriction applicable? Please comment.

8. ***Export of Lethal Military Equipment to Terrorist States*** (FY 2003 Act Sec. 543; FAA Sec. 620H). Absent a Presidential determination, assistance is prohibited to a government that provides lethal military equipment to a terrorist government (those described in 7 above).

As of 2/28/03, no countries have been identified.

[Contacts: Ron Parsons, State, Deputy Director, Office of Export Controls and Conventional Arms Nonproliferation Policy (NP/NPC/ECNP), 202-647-0397, Walter Sulzysky, State/L/NP, 202-647-4621]

Is this restriction applicable? Please comment.

9. **Compliance With UN Sanctions Against Iraq** (FY 2003 Act Sec. 531). Absent certain Presidential determinations or certifications, assistance is prohibited to a country not in compliance with UN sanctions against Iraq.

As of 2/28/03, no countries are impacted by this section. A waiver was approved for Jordan and Turkey.

Is this restriction applicable? Please comment.

10. **Discrimination** (FAA Sec. 666(b)). Assistance is prohibited to a recipient country that objects, on the basis of race, religion, national origin, or sex, to the presence of any officer or employee of the U.S. who is present in such country to carry out economic development programs under the FAA.

Is this restriction applicable? Please comment.

11. **Nuclear Technology** (Arms Export Control Act Secs. 101, 102).

- (a) Absent special certification by the President, assistance is prohibited if the recipient country has either delivered or received from any other country nuclear enrichment or reprocessing equipment, materials, or technology, without specified arrangements or safeguards any time after August 3, 1977.
- (b) Absent special certification by the President, assistance is prohibited if the recipient country has, on or after June 30, 1994,
 - (1) Transferred a nuclear explosive device to a non-nuclear weapon state,
 - (2) Received or detonated a nuclear explosive device, or
 - (3) Exported (or attempted to export) illegally from the U.S. any material, equipment, or technology that would contribute significantly to the ability of a country to manufacture a nuclear explosive device.

[Contact: State/L/NP, Katherine McManus, 202-647-4621]

Are these restrictions applicable? Please comment.

12. Military Coup or Decree (FY 2003 Act Sec. 508). Assistance is prohibited to the government of a country where the duly elected head of government of the recipient country has been deposed by military coup or decree unless the President has notified Congress that a democratically elected government has since taken office. Since FY 2002, the section does not apply to assistance to promote democratic elections or public participation in democratic processes.

Is this restriction applicable? Please comment.

13. Exploitation of Children (FAA Sec. 116(b)). Assistance is prohibited where the Department of State has determined that the recipient government has failed to take appropriate and adequate measures, within its means, to protect children from exploitation, abuse, or forced conscription into military or paramilitary services.

Is this restriction applicable? Please comment.

14. Parking Fines (FY 2003 Act Sec. 544). Assistance to a recipient country must be reduced by 110 percent of the amount of unpaid parking fines owed to the District of Columbia and New York City.

OYB country levels are adjusted by amounts owed by PPC/M/RA as part of the OYB process. **No action required** by country desk.

[Contact: Sharon Nichols, PPC/M/RA, 202-712-4533.]

15. Delivery of Humanitarian Assistance (FAA Sec. 620I). Absent a Presidential determination, assistance is prohibited where the recipient government has prohibited or otherwise restricted, directly or indirectly, the transport or delivery of U.S humanitarian assistance.

Is this restriction applicable? Please comment.

16. Assistance to Cuba (FAA Sec. 620(y), as amended by section 2810 of FY 98/99 Foreign Relations Authorization Act, Pub. L. 105-277; LIBERTAD Act Sec. 111; Pub. L. 104-114).

- (a) If a country (or any entity in the country) provided (1) nuclear fuel and related assistance and credits or (2) assistance or credits in support of the Cuban nuclear facility at Juragua, Cuba at any time after March 12, 1996, then assistance to such country must be reduced by an amount equal to the sum of any such assistance or credits.
- (b) Assistance to a recipient country must be reduced by an amount equal to the aggregate value of nuclear fuel related assistance and credits provided by that country to Cuba during the preceding fiscal year, unless Cuba
 - (1) Has ratified the Treaty on the Non-Nuclear Proliferation of Nuclear Weapons or the Treaty of Tlatelolco and Cuba is in compliance therewith;
 - (2) Has negotiated and is in compliance with full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such treaty; and
 - (3) Incorporates and is in compliance with internationally accepted nuclear safety standards.

Are these restrictions applicable? Please comment.

17. Human Rights Violations (FAA Secs. 116 and 502B). If the Department of State has determined that the recipient government has engaged in a consistent pattern of gross violations of internationally recognized human rights, then

- (a) Economic Support Fund funds may be used only if the assistance will directly benefit the needy; and
- (b) Development Assistance funds may be used only if the President has found that the country has made such significant improvement in its human rights record that furnishing such assistance is in the U.S. national interest.

[Contact: L/HRR, Andre Surena, 202-647-4065]

Is this restriction applicable? Please comment.

18. Trafficking in Persons (Sec. 110 of Trafficking Victims Protection Act of 2000, Pub. L. 106-386; effective January 1, 2003). Nonhumanitarian, nontrade-related foreign assistance is not to be provided to any government that the Secretary of State has identified as

- (a) Not complying with minimum standards for the elimination of trafficking; and
- (b) Not making significant efforts to bring itself into compliance with such standards.

This part of the trafficking victims protection act will take effect after State issues the 2003 Trafficking in Persons report. That report is due out on June 1, 2003. Somewhere between 45 and 90 days after the report comes out, a presidential determination will be made on how the U.S. Government proposes to apply the sanctions.

[Contact: EGAT/WID]

Is this restriction applicable? Please comment.

19. Activity Information Sheet Data. (See ADS 203.3.9) Has the USAID Country Officer informed PPC/SPP of any ongoing activity, that he/she is already aware of, which is not included in the "Activities Not Managed In-Country" ("ANMIC") database? The Country Officer does NOT have an obligation to inquire about activities that he/she does not already know about or to complete activity information sheets. The ANMIC is available at <http://cdie.usaid.gov/npc/>.

[Contact: PPC/SPP, Parrie Henderson, 202-712-1025]

Please comment

Part B. – "Taking Into Consideration" Provisions

- 1. Mob Action** (FAA Sec. 620 (j)). Assistance may be terminated if the recipient country permitted (or failed to take adequate measures to prevent) damage or destruction of U.S. property by mob action.

2. **Seizure of U.S. Fishing Vessels** (FAA Sec. 620(o); Fishermen's Protective Act of 1967, as amended, Sec. 5 (22 U.S.C. 1975(b))). Assistance may be denied or offset if the recipient country has seized, or imposed any penalty or sanction against, any U.S. fishing vessel fishing in international waters.
3. **Overseas Private Investment Corporation (OPIC) Investment Guaranty** (FAA Sec. 620(l)). Assistance may be denied if the recipient country has failed to enter into an investment guaranty agreement with OPIC.
4. **United Nations (U.N.) Obligations** (FAA Sec. 620(u)). The payment status of the recipient country's U.N. obligations is to be taken into account when considering assistance levels.
5. **Algiers Meeting** (Section 720 of the International Security and Development Cooperation Act of 1981 (ISDCA of 1981)). The fact that a country attended and otherwise failed to disassociate itself from the communiqué issued at the Meeting of Ministers of Foreign Affairs and Heads of Delegations of the Non-Aligned Countries to the 36th General Assembly of the U.N. on September 25 and 28, 1981, is to be taken into account when considering assistance levels to such country.

III. ASSISTANCE CHECKLIST

This checklist is to help managers and teams ensure that activities are consistent with applicable law. Since different provisions apply at different stages of the process, this Checklist is divided into the following parts: (A) Planning, (B) Congressional Notifications, and (C) Obligating Documents.

In addition to completing this Checklist, managers and teams should check with the Desk Officer to make sure that the Country Checklist has been completed and nothing has occurred since completion of the Country Checklist which would affect USAID's ability to provide assistance.

For the most part, no distinction between Development Assistance and Economic Support Fund funds is made in this Assistance Checklist because the FAA provides that, to the maximum extent feasible, ESF assistance should be provided consistent with the policy directions, purposes, and programs of Development Assistance.

Part A. -- Planning (in alphabetical order)

1. **Activity Information Sheet.** (See ADS 203.3.9) Does this activity require an Activity Information Sheet ("AIS"). If so, has it been prepared or, if there is already an AIS for the activity, has it been reviewed and updated. See Additional Help document, database for accessing Blank Activity Information Sheet (AIS) Template (<http://www.usaid.gov/pubs/ads/200/200sbj.doc>), available at <http://cdie.usaid.gov/npc/> (accessible only within the USAID firewall); or send an e-mail request to npctemplate@dec.cdie.org.

[Contact: PPC, Parrie Henderson, 202-712-1025]

Please comment

2. **Agricultural Activities (Bumpers Amendment)** (FY 2003 Act Sec. 513(b), as interpreted by the conference report for the original enactment). No funds may be used for agricultural development activities (specifically, any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training) that would compete with a similar commodity grown or produced in the United States unless the activity

(a) Is designed to increase food security in developing countries and where such activities will not have a significant impact in the export of agricultural commodities of the United States; or

(b) Is a research activity intended primarily to benefit American producers.

Is this restriction applicable? Please comment.

3. **Communist Assistance** (FAA Sec. 620(h)). Arrangements should be made to ensure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of the Communist-bloc countries.

Please comment.

4. **Adverse Economic Impact Upon the United States.**

***(a) Impact on U.S. Jobs: Relocation; Export Zones; Violation of Workers' Rights** (FY 2003 Act, Sec. 533, see ADS 225). Assistance may not be provided

- (1) To a business located in the U.S. for the purpose of inducing that business to relocate outside the U.S. in a manner that would likely reduce the number of U.S. employees of that business;
- (2) For the purpose of establishing or developing an export processing zone or designated area in which the country's tax, tariff, labor, environment, and safety laws do not apply, unless the President has determined and certified that such assistance is not likely to cause a loss of jobs within the U.S. [Note: this subsection has not been included since the FY 2002 Act but is still in PD 20]; or
- (3) For an activity that contributes to the violation of internationally recognized workers rights of workers in the recipient country. This is applied commensurate with the level of development of the recipient country and not to preclude assistance for the informal sector including micro and small-scale enterprise and smallholder agriculture. However under the provision in the FY 2003 Act, these exceptions no longer apply to the right of workers to associate, to organize and bargain collectively, and the prohibition on the use of any form of forced or compulsory labor.

Please comment.

(b) Production of Surplus Commodities (FY 2003 Act Sec. 513(a)). Assistance may not be provided to establish or expand production of any commodity for export if the commodity is likely to be in surplus on world markets and substantial injury will be caused to U.S. producers of the same, similar, or competing commodities.

Is this restriction applicable? Please comment.

5. Environment

(a) Environmental Assessment (FAA Sec. 117; 22 CFR 216 (USAID Regulation 16), see ADS 204). 22 CFR 216 requires an Initial Environmental Examination, unless the proposed assistance falls within certain exceptions and other actions.

Please comment.

(b) CITES - Convention on International Trade in Endangered Species of Flora and Fauna (FY 2003 Act, "Development Assistance" heading under Title II). No funds may be used in support of activities which contravene CITES.

Is this applicable? Please comment.

(c) Debt-for-Nature Exchange (FAA Sec. 463). Assistance that will finance a debt-for-nature exchange must

- (1) Support protection of the world's oceans and atmosphere, animal and plant species, or parks and reserves; or
- (2) Promote natural resource management, local conservation programs, conservation training programs, public commitment to conservation, land and ecosystem management, or regenerative approaches in farming, forestry, fishing, and watershed management.

Is this applicable? Please comment.

(d) Tropical Forest Degradation (FAA Sec. 118). Funds may not be used for

- (1) The procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner and that the proposed activity will produce positive economic benefits and sustainable forest management systems;
- (2) Actions that will significantly degrade national parks or similar protected areas that contain tropical forests, or introduce exotic plants or animals into such areas;
- (3) Activities that would result in the conversion of forest lands to the rearing of livestock;
- (4) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) that pass through relatively undegraded forest lands;
- (5) The colonization of forest lands; or
- (6) The construction of dams or other water control structures that flood relatively undergraded forest lands.

However, funds may be used for activities in (3) through (6) above if an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner that supports sustainable development.

Is this applicable? Please comment.

- 6. *Expropriation and Land Reform*** (FAA Sec. 620(g)). Assistance may not be used to finance compensation to owners for expropriated or nationalized property, except to compensate foreign nationals in accordance with a land reform program certified by the President.

Is this applicable? Please comment.

7. *Family Planning.*

(a) *Abortions and Involuntary Sterilizations Prohibited* (FAA Sec. 104(f); FY 2003 Act Sec. 518 and, "Child Survival and Health Programs Fund" heading under Title II). Funds may not be used

- (1) To perform abortions as a method of family planning or to motivate or coerce any person to practice abortions. (Note that the term "motivate" does not include the provision, consistent with local law, of information or counseling about all pregnancy options.)
- (2) To pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations.
- (3) To pay for any biomedical research that relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.
- (4) To furnish assistance to any country or organization if the President certifies that the use of these funds by such country or organization would violate the three provisions above.
- (5) To lobby for or against abortion.
- (6) To furnish assistance to any organization or program that supports or participates in the management of a program of coercive abortion or involuntary sterilization.

<p>Is this applicable? Please comment.</p>
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(b) *Voluntary Family Planning Support* (FY 2003 Act, Title II, under heading "Child Survival and Health Programs Fund"). Funds may be made available only to voluntary family planning projects that

- (1) Offer, either directly or through referral to, or provide information about access to, a broad range of family planning methods and services (as a legal matter, Development Assistance only).
- (2) Meet the following requirements:
 - (a) Service providers do not implement or are not subject to quotas, or targets, of numbers of births, family planning acceptors, or acceptors of a particular form of family planning (quantitative estimates or indicators for planning and budgeting purposes is acceptable);

- (b) The project must not provide payment of incentives, bribes, gratuities, or financial rewards for becoming a family planning acceptor or achieving numerical target or quota;
 - (c) The project must not deny any right or benefit, including right of access to any program of general welfare or right of access to health care, as a consequence of any decision not to accept family planning services;
 - (d) The project must provide comprehensible information of the health benefits and risks of method chosen; and
 - (e) The project must ensure that experimental drugs and services are provided only in the context of scientific study in which participants are advised of potential risks and benefits.
- (3) No applicant may be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning (as a legal matter, Child Survival and Health Programs Fund account only).

Is this applicable? Please comment.

(c) *Certifications for Foreign Organizations* (FY 2000 Act Sec. 599D). [Note: NOT applicable to FY 2003 funds because it was not included in the FY 2003 Act but it still applies to FY 2000 Act funds]. Notwithstanding any other provision of law, population assistance may made available for any foreign private, non-governmental, or multilateral organization until the organization certifies that it will not, during the availability of these funds --

- (1) Perform abortions in any foreign country, except where the life of the mother would be endangered, or in cases of rape or incest; or
- (2) Violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited, or engage in activities or efforts to alter the laws or governmental policies of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

The President may waive (1) and (2), but if he does so, the amount of funding for population assistance is reduced by \$12.5 million. That amount is to be transferred to the Child Survival and Disease Programs fund for assistance for infant and child health programs that have a direct, measurable, and high impact on reducing the incidence of illness and death among children. The waiver authority is limited to allow the provision of \$15 million to organizations that do not certify.

Is this applicable? Please comment.

- 8. International Conferences** (FY 2003 Act Sec. 541, see Guidance on Funding Foreign Government Delegations to International Conferences, Mandatory Reference to ADS 302, 303, 306, 308, 350, and 522). Development Assistance funds may not be used to pay the costs for participation of another country's delegation at international conferences held under the auspices of multilateral or international organizations.

Is this applicable? Please comment.

- 9. Legislative Action** (FAA Sec. 611(a)(2)). If the obligation is more than \$500,000 and requires legislative action within the recipient country, there must be a basis for a reasonable expectation that such action will be completed in time to permit orderly accomplishment of the purpose of the assistance.

Is this restriction applicable? Please comment.

10. Loans

(a) (FAA Section 122(b)). In making loans, USAID must consider the following:

- (1) Information and conclusion on the capacity of the country to repay the loan at a reasonable rate of interest.
- (2) Does the activity give reasonable promise of assisting long-range plans and programs designed to develop economic resources and increase productive capacities?
- (3) If repayable in dollars, the interest rate must be at least 2 percent per annum during a grace period which is not to exceed 10 years, and at least 3 percent per annum thereafter, but no higher than the applicable legal rate of interest of the country in which the loan is being made.

Is this applicable? Please comment.

(b) Productive enterprises competing with U.S. enterprises (FAA Sec. 620(d)). No FAA loan funds may be used for any productive enterprise that will compete with U.S. enterprises, unless

- (1) There is an agreement by the recipient country to prevent export for use or consumption in the U.S. of more than 20 percent of the enterprise's annual production during the life of the loan; or
- (2) If in the absence of such an agreement, the President has established import controls to effectuate that agreement.

This may also be waived by the President due to national security interest.

Is this restriction applicable? Please comment.

11. Military Purposes (FAA Sec. 531(e)). Congress has explicitly provided that ESF funds may not be used for military or paramilitary purposes.

Is this restriction applicable? Please comment.

12. Nuclear Resources – Export of (FY 2003 Act Sec. 506). Assistance may not be used to finance, except for purposes of nuclear safety, the export of nuclear equipment, fuel, or technology.

Is this restriction applicable? Please comment.

13. Police and Prisons (FAA Sec. 660). Assistance may not be used to provide training, advice, or any financial support for police, prisons, or other law enforcement forces (see exceptions in Sections 660, 119 and 534 of the FAA and 536 and 582 of FY2003 Act).

Is this restriction applicable? Please comment.

14. *Publicity, Propaganda, and Lobbying* (FY 2003 Act Sec. 540; Anti-Lobbying Act, 18 U.S.C. 1913). Assistance may not be used to support or defeat legislation pending before Congress, to influence in any way the outcome of a political election in the United States, or for any publicity or propaganda purposes not authorized by Congress.

Is this applicable? Please comment.

15. *PVOs -- Funding Sources for U.S. PVOs* (FY 2003 Act Sec. 501). If assistance is to be made to a United States private voluntary organization (PVO) (other than a cooperative development organization), it must obtain at least 20 percent of its total annual funding for international activities from sources other than the United States Government. This may be waived in certain circumstances. Check with the Bureau for Humanitarian Response, Office of Private and Voluntary Cooperation (BHR/PVC) to see if the U.S. PVO has met the requirement.

Is this applicable? Please comment.

Part B. Congressional Notifications.

1. *General Notification (FY 2003 Act Sec. 515; FAA Sec. 634A). Obligations must be notified to Congress. This is usually accomplished through the annual Congressional Presentation. It may be the subject of a Special Notification, as below. Additionally, a new Congressional Notification must be made 15 days in advance of the obligation if the amount of the obligation has increased 10 percent from that previously notified.

Is this applicable? Please comment.

2. **Special Notification.** For activities, countries, and other actions requiring special notification see the attached memo entitled “Changes Made by the FY 2003 Foreign Operations Appropriations Act to Current Law.”

Is this applicable? Please comment.

Part C. Obligating Documents

1. Source, Origin, and Nationality (See ADS 310).

- (a) General** (FAA Sec. 604(a)). All procurement must be from the U.S., the recipient country, or developing countries except as otherwise determined in accordance with Agency rules. If planning procurement elsewhere, a waiver must be obtained.

Please comment.

- (b) Automobiles -- buy only U.S. made motor vehicles** (FAA Sec. 636(i)). Assistance may not be used to finance the purchase, sale, long-term lease, exchange, or guaranty of the sale of motor vehicles manufactured outside U.S., unless a waiver is obtained.

Please comment.

- (c) Agricultural Procurement** (FAA Sec. 604(e)). Agricultural commodities and products thereof must be procured within the U.S. unless the commodity or product could not be reasonably produced in the U.S. in fulfillment of the particular assistance program. Waivers are available in some circumstances.

Please comment.

- (d) Construction or Engineering Services** (FAA Sec. 604(g)). No engineering or construction services may be procured from advanced developing countries eligible under Code 941 that have attained competitive capability in international markets, *unless*

- (1) The advanced developing country is receiving direct economic assistance under the FAA, and
- (2) Its own assistance program would permit U.S. firms to compete for similar services.

Please comment.

2. **Cash Transfers – Requirement for Separate Account** (FY 2003 Act Sec. 529(b)). If assistance is in the form of a cash transfer or nonproject sector assistance, all such cash payments must be maintained by the country in a separate account and not commingled with any other funds (unless such requirements are waived by Congressional notice for nonproject sector assistance).

Please comment.

3. **Capital Assistance**

- (a) **Mission Director Certification/Assistant Administrator Determination** (FAA Sec. 611(e)). When capital assistance is proposed (for example, construction), and total U.S. assistance for it will exceed \$1 million, the Mission Director must certify and the Regional Assistant Administrator must take into consideration the country's capability to maintain and utilize the assistance effectively.

Please comment.

- (b) **Developmentally sound projects** (Jobs Through Export Act of 1992, Sections 303 and 306(b)), Pub. L. 102-549, 22 U.S.C. 2421b and 2421d(b). If assistance is being provided for a capital activity, the activity must be developmentally sound and measurably alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level.

Please comment.

- (c) **U.S. Engineering Services** (FAA Sec. 601(d)). If using capital (for example, construction) assistance, U.S. engineering and professional services must be used to the maximum extent, consistent with U.S. interests.

Please comment.

4. Assistance Generating Local Currency (FY 2003 Act Sec. 529). If assistance is furnished to a foreign government under arrangements that result in the generation of local currencies

- (a) USAID must
 - (1) Require that local currencies be deposited in a separate account established by the recipient government;
 - (2) Enter into an agreement with that government providing the amount of local currencies to be generated and the terms and conditions under which the currencies so deposited may be utilized; and
 - (3) Establish by agreement the responsibilities of USAID and the host government to monitor and account for deposits into and disbursements from the separate account.
- (b) Local currencies, or an equivalent amount of local currencies, can be used only to carry out the purposes of the Development Assistance or Economic Support Fund chapters of the FAA (depending on which chapter is the source of the assistance) or for the administrative requirements of the United States Government.
- (c) USAID should take all necessary steps to ensure that the equivalent of local currencies disbursed from the separate account is used for the agreed purposes.
- (d) If assistance is terminated to a country, unencumbered balances of funds remaining in a separate account should be disposed of for purposes agreed to by the recipient government and the United States Government.

Please comment.

5. Printing Costs. The Bureau for Legislative and Public Affairs (LPA) must approve printing costs of a report of study (except feasibility, design, or evaluation reports or studies) more than \$25,000. [Note: While the requirement for this review is not in the FY 2003 Act, the USAID guidance still applies.]

Please comment.

6. ***Alcoholic Beverages and Certain Entertainment Expenses*** (FY 2003 Act Sec. 549). Development Assistance or Economic Support Funds may not be used for alcoholic beverages or entertainment expenses that are substantially of a recreational nature.

Please comment.

7. ***State Department Notification of Bilateral Agreements With an Obligation of \$25 Million or More*** (see ADS 349). The date of signing and the amount involved must be cabled to State Office of Assistant Legal Adviser for Treaty Affairs (L/T) immediately upon signing and the full text of the agreement should be pouched to State/L/T within 20 days of signing.

Please comment.

8. ***Engineering and Financial Plans*** (FAA Sec. 611). Before an obligation of more than \$500,000, there must be

- (a) Engineering, financial, or other plans necessary to carry out the assistance; and
- (b) A reasonably firm estimate of the cost to the U.S. of the assistance.

And, if the plan relates to a water or water-related land resource construction, the plan should include a computation of benefits and costs. This figure must be computed to the extent practicable in accordance with the principles, standards, and procedures established pursuant to the Water Resources Planning Act (42 U.S.C. 1962, et seq.).

Please comment.

ANNEX
Changes Made by the FY 2003 Foreign Operations
Appropriations Act to Current Law, Memorandum from GC to
AA/PPC and AA/LPA, March 5, 2003

March 5, 2003

Memorandum

To: AA/PPC, Patrick Cronin
AA,LPA, Ed Fox

From: GC, John Gardner /s/

Subject: Changes Made by the FY 2003 Foreign Operations Appropriations Act to
Current Law

On February 20, the President signed into law H.J. Res. 2, the Consolidated Appropriations Resolution, 2003 (P.L. 108-7). Division E of that Act contains the text of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (the FY 2003 Act). The purpose of this memorandum is to identify and briefly describe the changes made by the FY 2003 Act to legal requirements and authorities previously applicable to USAID. Those changes marked with an asterisk will require the modification or issuance of agency-wide guidance. For the most part, the changes identified do not include earmarks and funding ceilings.

1. Congressional Notifications (*). As in prior Acts, the Appropriations Committees use the phrase “subject to the regular notification procedures of the Committees on Appropriations” to denote those programs which require special notification. This means that inclusion of a project or activity in the FY 2003 Congressional Budget Justification document is not sufficient to satisfy prior notification requirements for those countries, programs or activities, as the case may be, which the FY 2003 Act (and its accompanying Statement of Managers) specifically makes subject to “the regular notification procedures of the Committees on Appropriations”. Separate notifications will need to be submitted to Congress to satisfy this additional notification requirement. The following is a list of special notification requirements contained in the FY 2003 Act and the Statement of Managers:

a. prior to obligating funds managed by or allocated to the Global Development Alliance Secretariat;

- b. prior to obligating receipts from rental payments by other agencies for the use of space financed from the Capital Investment Fund;
- c. prior to obligating any funds appropriated to the Capital Investment Fund;
- d. prior to obligating ESF funds for assistance for the Central Government of Lebanon;
- e. prior to obligating ESF funds to provide assistance to the National Democratic Alliance of Sudan to strengthen its ability to protect civilians from attacks, slave raids, and aerial bombardment by the Sudanese Government forces and its militia allies;
- f. at least 5 days prior to obligating funds for assistance for Iraq under the authority of section 507 of the FY 2003 Act
- g. prior to obligating funds pursuant to the authority in section 508 of the FY 2003 Act to resume assistance to a country whose duly elected head of government has been deposed by military coup if a democratically elected government subsequently has taken office, or if the assistance is being provided to promote democratic elections or promote public participation in democratic processes;
- h. prior to obligating funds under the heading 'Assistance for the Independent States of the Former Soviet Union' for the Russian Federation, Armenia, Georgia, and Ukraine (section 517);
- i. prior to obligating funds for Colombia, Liberia, Serbia, Sudan, Zimbabwe, Pakistan, or the Democratic Republic of the Congo (section 520);
- j. in section 526, prior to obligating funds for the democracy programs specified in that section (e.g., programs for the People's Republic of China, Tibet, Hong Kong, and "countries with significant Muslim populations");
- k. prior to obligating funds for any cash transfer or nonproject assistance, e.g., Israel and Pakistan (section 529);
- l. prior to obligating funds to combat trafficking in persons (section 534(a));
- m. prior to obligating funds under section 537 of the FY 2003 Act for nongovernmental organizations for assistance to countries that would otherwise be prohibited from receiving assistance;
- n. prior to obligating funds for Burma under section 558 of the FY 2003 Act;
- o. prior to the distribution of any assets resulting from the winding up of an Enterprise Fund under section 559 of the FY 2003 Act;

p. prior to obligating ESF funds for assistance to Iraq under section 567 of the FY 2003 Act;

q. prior to obligating funds for community based police assistance for Jamaica and El Salvador under section 582 of the FY 2003 Act.

2. Child Survival and Health Programs Fund.

a. Availability of Funds. The FY 2003 Act appropriates funds for the Child Survival and Health Programs Fund to remain available for obligation until September 30, 2005. In prior years these funds had been appropriated to remain available until expended (i.e., no-year money). Pursuant to section 511 of the FY 2003 Act, Child Survival and Health Programs Fund appropriations, once obligated, become available for deobligation and reobligation until September 30, 2009.

b. Operating Expenses. Authority is provided to transfer up to \$6 million of funds appropriated under this heading to the USAID operating expenses account to be used to pay administrative costs directly related to international health activities. These funds may not be derived from amounts that are to be provided to UNICEF and the Global Fund to Fight AIDS, Tuberculosis, and Malaria. Once transferred these funds are no longer available for obligation until September 30, 2005, but must be obligated by the end of fiscal year 2003.

c. Transfers to Other Agencies. Child survival and health funds appropriated under this heading are required to be apportioned to USAID (which is the current practice), and may not be transferred or allocated under the authority of section 632 of the Foreign Assistance Act, or any comparable provision of law (e.g., the Economy Act) to the Department of Health and Human Services. The only exception to this limitation is the authority to transfer or allocate up to \$25 million to the Centers for Disease Control and Prevention. In addition, sections 509(d) and 579 of FY 2003 Act, discussed below, will require additional clauses to be included in section 632 agreements.

d. Global Fund. Of the funds appropriated for Child Survival and Health programs, \$250 million are earmarked for a United States contribution, notwithstanding any provision of law, to the Global Fund to Fight AIDS, Tuberculosis and Malaria.

3. Asia and the Near East.

a. Afghanistan. The authority to provide assistance “notwithstanding any other provision of law” for Afghanistan has been modified in section 534(a) of the Act so that only the Brooke Amendment (section 512 of the FY 2003 Act) and section 620(q) of the Foreign Assistance Act are made inapplicable to Afghanistan for FY 2003. (See, also, section 523 of the FY 2003 Act for the “soft” earmark of \$295.5 million for assistance for Afghanistan, and the related portion of the Statement of Managers for the recommended allocation of that soft earmark. Also, under the International Disaster Assistance

heading, for a separate line-item appropriation of \$60 million for Afghanistan assistance, which is included within the “soft” earmark.)

b.. Iraq. Section 507 of the FY 2003 Act retains the prohibition on assistance and Export-Import Bank financing for Cuba, Iraq, Libya, North Korea, Iran, Sudan, or Syria, however with regard to Iraq the President is given the authority to waive the prohibition, in order to provide humanitarian and relief assistance, if he determines it is important to U.S. national security interests. There is no definition of “humanitarian and relief assistance”, however the Statement of Managers notes that this limitation does not preclude “assistance for the promotion of democracy or governance if the goal of such assistance is the maintenance of social services and public order”. In addition, the Statement of Managers expresses the intent of the Committees that “this authority not be used inside Iraq, except for assessments of humanitarian and relief needs by private or nongovernmental organizations, prior to any military action against Iraq or, in the absence of such action, prior to a change of regime in Iraq.” Section 507 also requires that the Committees be notified 5 days in advance of the obligation of funds under the authority of this section, and also requires a report every 60 days on, among other things, the status of obligations, expenditures, and allocations of funds for Iraq assistance. The authority to provide assistance for Iraq pursuant to the waiver contained in this section will lapse on the date of enactment of a supplemental appropriations act for fiscal year 2003 for foreign assistance programs.

Section 567 of the FY 2003 Act continues the authority to use ESF funds for programs benefiting the Iraqi people and to support efforts to bring about a political transition in Iraq, notwithstanding any other provision of law.

c. Burma. Section 558 earmarks \$7 million of Economic Support Funds for democracy activities in Burma, assistance along the Burma-Thailand border, for Burmese student groups and other organizations located outside Burma, and for the purpose of supporting the provision of humanitarian assistance to displaced Burmese along Burma’s borders. This is an expansion of current authority to provide assistance to Burma. The necessary notwithstanding authority and the prior notification requirement are included.

d. Cambodia. Section 560(b) continues the prohibition on assistance to the central Government of Cambodia but carves out an expanded list of exceptions to that prohibition including assistance for basic health, reproductive and maternal and child health, cultural and historic preservation, HIV/AIDS, tuberculosis, malaria and polio programs, programs to combat human trafficking that are provided through nongovernmental organizations, and assistance for the Ministry of Women and Veterans Affairs to combat human trafficking. In addition, authority is provided to use up to \$5 million of ESF for democracy programs, and \$3.75 million of funds in the Act are earmarked for an endowment to sustain rehabilitation programs for Cambodians suffering from physical disabilities.

e. Palestinian Statehood. Section 563 of the FY 2003 Act prohibits the use of FY 2003 funds to support a Palestinian state unless the Secretary of State makes a required

determination regarding, among other things, the leadership of the new state its commitment to peaceful co-existence with Israel. The President is authorized to waive the prohibition if he determines that it is vital to the national security interests of the United States to do so. In addition, the prohibition does not apply to assistance intended to reform the Palestinian Authority and affiliated institutions, or a newly elected government, in order to help meet the elements that the Secretary is required to certify.

f. West Bank and Gaza Program. Section 568(a) of the FY 2003 Act continues the requirement that the Secretary of State certify that procedures have been established to allow the GAO access to appropriate U.S. financial information in order to review the uses of U.S. assistance for the West Bank and Gaza program. In addition, section 568(b) contains a new requirement that the Secretary of State take appropriate steps to ensure that assistance is not provided to or through any individual or entity that the Secretary knows or has reason to believe advocates, sponsors, engages in or has engaged in, terrorist activity. The Secretary is required to take appropriate steps to ensure compliance with this provision. Lastly, section 568(c) requires that the Administrator ensure that Federal and non-Federal audits of all contractors and grantees, and significant subcontractors and subgrantees, are conducted at least annually to ensure, among other things, compliance with subsection (b). Funding is made available in this section to the USAID Inspector General for this purpose.

4. Capital Investment Fund. The FY 2003 Act appropriates funds for USAID's Capital Investment Fund. In doing so, the Act places several conditions on their use:

a. Proposed obligations of such funds must be justified in separate notifications submitted to Congress prior to the obligation of funds as special notification requirements.

b. USAID must assess rent charges on any US Government agency using space in buildings constructed using funds appropriated to the Fund.

c. Rental payments received by USAID may be used for the purposes of the Fund subject to prior notification.

d. Assignment by another agency of its employees or contractors to work in buildings constructed using funds appropriated to the Fund is made subject to the concurrence of the USAID Administrator.

5. Former Soviet Union.

a. Ukraine. Subsection (f) under the heading "Assistance for the Independent States of the Former Soviet Union", prohibits FY 2003 funding under this heading unless the Secretary of State determines that since September 30, 2000, the Government of Ukraine has not facilitated or engaged in arms sales or arms transfers to Iraq.

b. Uzbekistan. Section 574(a) of the FY 2003 Act prohibits assistance for the Government of Uzbekistan unless the Secretary of State determines that the Government is making substantial and continuing progress in meeting its commitments under a specified framework agreement entered into with the United States.

c. Kazakhstan. Section 574(b) of the FY 2003 Act prohibits assistance for the Government of Kazakhstan unless the Secretary of State determines that the Government has made significant improvements in the protection of human rights during the preceding six month period. This prohibition can be waived by the Secretary of State if he determines and reports to the Committees on Appropriations that it is in the national security interest of the United States to do so.

6. Andean Counterdrug Initiative. The FY 2003 Act directs the apportionment to USAID of \$250 million of ACI funds to be used for economic and social programs, and authorizes the use of up to \$4.5 million of ACI funds for USAID administrative expenses. Unlike the previously mentioned transfer of Child Survival and Health funds into USAID's operating expenses account, these ACI funds are not transferred and remain available for obligation until expended, i.e., they remain no-year money.

7. Special Allowances. Section 503 of the FY 2003 Act lowers the limitation on the amount of funds that can be used for official residence expenses to \$100,500 and, in section 505, increases the amount that can be provided for representation allowances to \$125,000.

8. Transfers (*). Section 507(b) contains requirements enacted in prior appropriations legislation that subjects transfers between accounts (as opposed to inter-agency transfers and allocations) to prior consultation with, and submission of a written policy justification to, the Committees on Appropriations. This has been modified to require the consultation and submission of policy justification at least 5 days prior to the exercise of the transfer authority.

Section 507 places new limitations on inter-agency transfers of funds. Subsections (a) and (b) prohibit the transfer of funds to any other agency unless such transfer is made pursuant to authority contained in the FY 2003 Act or any other appropriations Act, or is made pursuant to the authority contained in sections 109, 610 and 632 of the Foreign Assistance Act. As a practical matter, the effect of these two subsections is to prohibit transfers under Economy Act authorities.

Section 507(d) requires that any agreement entered into by USAID with another agency that allocates or transfers funds to that agency under section 632(a) of the Foreign Assistance Act, or any comparable provision of law, must require that the agency's Office of Inspector General perform periodic financial and program audits of the use of the transferred or allocated funds. A portion of the transferred or allocated funds may be used to finance those audits.

9. Endowment Authority (*). Section 528 does not include authority for USAID to make endowments with FY 2003 appropriated funds. This authority had been included in prior year legislation, and to the extent such funds remain available for obligation they are legally unaffected by this change in the law. However, there are obvious political concerns that should be addressed with LPA before going forward using prior year funds.

10. Impact on Jobs(*). Section 533(b) retains the current prohibition on assistance that contributes to the violation of internationally recognized workers rights, but makes a technical correction to the proper section of the Trade Act of 1974. In addition, the authority is continued to apply this subsection commensurate with the level of development of the recipient country and not to preclude assistance for the informal sector including micro and small-scale enterprise and smallholder agriculture. However under the provision in the FY 2003 Act, these exceptions no longer apply to the right of workers to associate, to organize and bargain collectively, and the prohibition on the use of any form of forced or compulsory labor, i.e., sections 507(4)(A) through (C) of the Trade Act of 1974.

11. Trafficking in Persons (*). Section 534(a) of the FY 2003 Act provides authority to assist victims of trafficking in persons notwithstanding any provision of law.

12. Personal Services Contracts (*). Section 534(c) of the FY 2003 Act reduces to 20 the number of personal services contractors that can be employed under this authority, limits to 7 the number of such contractors that can be assigned to any bureau or office, and limits the availability of this authority to OP, ANE and AFR.

13. Shipment of Humanitarian Assistance. Section 534(g) of the FY 2003 Act provides authority to make available funding to nongovernmental organizations for administrative costs necessary to implement a program to obtain donated space on commercial vessels for the shipment of humanitarian assistance overseas.

14. Police Authorities.

a. Trafficking in Persons (*). Section 534(a), among other things, permits assistance to combat trafficking in persons, notwithstanding any provision of law. Such assistance could include assistance to law enforcement forces to help combat human trafficking. This authority may only be exercised subject to congressional notification.

b. Reconstituting Civilian Police Authority (*). Section 534(h) clarifies that for purposes of section 660(b)(6) of the Foreign Assistance Act , a post-conflict “nation emerging from instability” may include support for regional, district, municipal or other sub-national entities emerging from instability, as well as a nation emerging from instability.

c. Community Based Police Assistance. Section 582 of the FY 2003 Act continues the authority for Jamaica’s community based police assistance program and also makes El Salvador eligible. Such assistance is subject to the special notification

requirements of the Act. In addition, the annual Congressional Budget Justification document is to include a progress report for both programs. This report is in lieu of a similar report required in the FY 2002 Foreign Operations Appropriations Act.

15. Assistance Through Nongovernmental Organizations (*). Section 537 of the FY 2003 Act continues the authority to provide economic assistance in support of programs of nongovernmental organizations notwithstanding prohibitions on assistance to a country, subject to special notification requirements. The requirement contained in prior legislation that the President take into consideration whether such assistance is in the national interest before exercising this authority, has not been included for FY 2003.

16. Parking Fines (*). Section 544 of the FY 2003 Act continues the requirement to withhold from obligation certain unpaid parking fines. The provision has been modified to make reference to “unpaid parking fines determined to be owed under the parking programs” in New York City and the District of Columbia.

17. Theatrical and Musical Productions (*). Section 549 of the FY 2003 Act adds entrance fees to theatrical and musical productions to the list of items that cannot be funded using IMET, FMF, Child Survival and Health, Development Assistance, and ESF funds.

18. Restrictions on Assistance to Governments Destabilizing Sierra Leone. Section 570 of the FY 2003 Act no longer includes language contained in the FY 2002 Act related to governments that provide support to the Revolutionary United Front, the Liberian Security Forces or any other group intent on destabilizing Sierra Leone. The provision regarding the illicit distribution, transportation, or sale of diamonds mined in Sierra Leone has been retained.

19. Voluntary Separation Incentives (*). Section 571 extends the USAID-specific voluntary separation authority through January 1, 2003. The termination of this authority was made appropriate because of the enactment of government-wide buyout authority included in legislation establishing the Department of Homeland Security.

20. Serbia. Section 578 of the FY 2003 Act is essentially the same as current law except that the date after which most assistance can no longer be provided to Serbia, unless the President makes a specified determination, has been changed to June 15, 2003.

21. Taxation of U.S. Assistance (*). Section 579 of the FY 2003 Act does several things with regard to the issue of customs duties and value added taxes imposed by foreign governments on commodities financed by U.S. assistance.

a. After the date of enactment of the Act (February 20, 2003), no funds can be obligated pursuant to a new bilateral agreement or under a new framework bilateral agreement which does not include provision for the exemption or reimbursement of VAT and customs duties. The Secretary of State is to expeditiously seek the modification of those agreements to conform with this requirement.

b. An amount equal to 200 percent of the unreimbursed VAT and custom duties assessed by a country from date of enactment of the Act to September 30, 2003, on commodities financed under U.S. assistance programs for which funds are appropriated by the Act, must be withheld from funds appropriated in fiscal year 2004 and allocated to the central government of such country (including the West Bank and Gaza).

c. Half of the withheld funds are available for reprogramming. The other half of the withheld funds must be returned to Treasury no later than September 6, 2004.

d. The GAO is directed to do an extensive report on the extent to which existing bilateral agreements provide exemption from taxation, the status of negotiations of new framework bilaterals or modifications to existing ones, the reasons why framework bilaterals entered into within the past 5 years have failed to include exemption from taxation, and the administrative procedures used to ensure that commodities are not taxed or, if they are, that the taxes are reimbursed.

22. Provisions Not Included. The FY 2003 Act does not include the following provisions that had been included in the FY 2002 Act:

- A provision that requires the use in the provision of assistance, to the maximum extent practicable, of American resources, including commodities, products, and services. (This largely repeats requirements in section 604 of the Foreign Assistance Act.) A related annual reporting requirement imposed on Treasury was repealed.
- The cap on assistance to the Middle East was not included in this year's Act.
- The provision dealing with discrimination against minority religious faiths in the Russian Federation was not included in this year's Act.
- The requirement for a Presidential determination prior to making contributions to international organizations and multilateral development banks has not been included in this year's Act.

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